

the period when the restrictions on future financing are in effect, the successor will be eligible for RUS loans to finance facilities to serve consumers located in the territory that was served by the active distribution borrower immediately prior to the effective date, provided that other requirements for loan eligibility are met.

§ 1717.159 Applications for RUS approvals of mergers.

If a proposed merger requires RUS approval according to RUS regulations and/or the loan documents executed by any of the active borrowers involved, the application must be submitted to RUS not later than 90 days prior to the effective date of the proposed borrower action. A distribution borrower should consult with its assigned RUS general field representative, and a power supply borrower with the Director, Power Supply Division for general information prior to submitting the request.

§ 1717.160 Application contents.

An application for RUS approval of a merger must include the documents listed in this section. Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.157 where appropriate.

(a) *Transmittal letters* signed by the managers of all borrowers and non-borrowers who are parties to the proposed merger. These letters must include the actual corporate name, address, and taxpayer identification number of all parties to the proposed merger. The transmittal letters must be signed originals on corporate letterhead stationery.

(b) *Resolutions from the boards of directors* of all borrowers and non-borrowers who are parties to the proposed merger. This document is the formal request by each entity for RUS approval of the proposed merger. The board resolution must include a description of the proposed merger, including timeframes, and authorization for RUS to release appropriate information to supplemental or other lenders, and for these lenders to release appropriate information to RUS. Each board resolution must be a certified original.

(c) *Evidence* that the proposed merger will result in a viable entity, and that

the security of outstanding RUS loans will not be adversely affected by the action. This evidence shall include financial forecasts, and any available studies such as net present value analyses covering a period of not less than 10 years from the effective date of the merger, as well as information about any threatened actions by other parties that could adversely affect the financial condition of any of the parties to the proposed merger, or of the successor. Such threatened actions may include annexations or other actions affecting service territory, loads, rates or other such matters.

(d) *Regulatory information* about pending federal or state proceedings pertaining to any of the parties that could have material effects on the successor.

(e) *Rate information.* Distribution and power supply borrowers shall submit schedules of proposed rates after the merger, including the effects of the proposed action on rates and the status of any pending rate cases before a state regulatory authority. The rates of power supply borrowers are subject to RUS approval. If rates are not projected to change after the merger, a statement to that effect will suffice.

(f) *Area coverage and line extension policies.* If any distribution systems are parties to the proposed merger, a statement of proposed area coverage and line extension policies for the successor.

§ 1717.161 Application process.

(a) Borrowers are responsible for ensuring that their applications for RUS approval of a merger are complete and sound in form and substance when they are submitted to RUS. After submitting an application, borrowers shall promptly notify RUS of any changes or events that materially affect the application or any information in the application.

(b) In reviewing borrower requests for approval of mergers, RUS will consider the likely effects of the action on the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries and on the security of outstanding RUS loans. Among the factors RUS will consider are whether the proposed merger is likely to:

(1) Contribute to greater operating efficiency and financial soundness;

(2) Mitigate high electric rates and or rate disparity;

(3) Help borrowers to diversify their loads or otherwise hedge risks;

(4) Have beneficial effects on rural economic development in the community served by the borrower, such as diversifying the economic base or alleviating unemployment; and

(5) Provide other benefits consistent with the purposes of the RE Act.

(c) RUS will not approve a merger if, in the sole judgment of the Administrator, such action is likely to have an adverse effect on the credit quality of outstanding loans made or guaranteed by the Government. RUS will thoroughly review each request for approval of such action, including review of the feasibility and security of outstanding Government loans according to the standards in 7 CFR 1710.112 and 1710.113, respectively, and in other RUS regulations.

(d) RUS will keep the borrowers apprised of the progress of their applications.

Subparts E–F [Reserved]

Subpart G—Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers

§ 1717.300 Purpose.

This subpart contains regulations of the Rural Utilities Service (RUS) implementing provisions of Section 4 of the RE Act (7 U.S.C. 904) which authorize the Administrator to establish terms and conditions of loans and implementing provisions of the RUS wholesale power contracts and other RUS documents which provide for the establishment of rates to be charged by power supply borrowers for the sale of electric power and energy. This subpart contains the general regulations of RUS for the pre-emption, under certain circumstances, which are not exclusive, of the regulation of a power supply borrower's rates by a state regulatory authority under state law and for the exercise of exclusive jurisdiction over rates by RUS pursuant to the RUS documents.

§ 1717.301 Policy.

(a) RUS makes and guarantees loans to borrowers to bring electric service to persons in rural areas. RUS requires, as a condition to making or guaranteeing any loans to power supply borrowers, that the borrower enter into RUS wholesale power contracts with its several members and assign and pledge such contracts as security for the repayment of loans made or guaranteed by RUS and for other loans which, pursuant to the RE Act, RUS has permitted to be secured pursuant to the RUS mortgage. The RUS wholesale power contract requires, among other matters, that the rates charged for power and energy sold thereunder produce revenues sufficient to enable the power supply borrower to make payments on account of all indebtedness of the power supply borrower. The Administrator relies upon the RUS wholesale power contracts together with other RUS documents to find and certify, as required in section 4 of the RE Act (7 U.S.C. 904), that the security for the loan is reasonably adequate and the loan will be repaid within the time agreed.

(b) RUS requires power supply borrowers to take such actions as may be necessary to charge rates for the sale of electric power and energy which are sufficient to pay the principal and interest on loans made or guaranteed by RUS in a timely manner and to meet the requirements of the RUS wholesale power contract and other RUS documents.

(c) With respect to power supply borrowers which are not subject to rate regulation by a state regulatory authority, RUS requires that such borrowers establish rates and obtain RUS approval of such rates as required by the terms of the RUS wholesale power contract and other RUS documents.

(d) With respect to power supply borrowers which are subject to regulation by a state regulatory authority, RUS does not make or guarantee a loan for the construction, operation or enlargement of any generating plant or transmission facility unless the consent of the state regulatory authority having jurisdiction in the premises is first obtained.